

LICENSE AGREEMENT

BY AND BETWEEN

BOSTON REDEVELOPMENT AUTHORITY

AND

AU BON PAIN

This Agreement is made as of the ____ day of May, 1993 by and between the Boston Redevelopment Authority, hereinafter called the Licensor, and Au Bon Pain hereinafter called the Licensee.

A license to occupy the License Area, as generally described in Exhibit A attached to this Agreement, is approved subject to the following terms and conditions:

1. The License Area is to be used solely for the temporary use of a certain portion of City Hall Plaza containing approximately 216± square feet adjacent to the "Sears Crescent Building" in Government Center for seasonal outdoor sidewalk cafe for patrons of Au Bon Pain for a period of May 1st to October 31st each year.

The License Area is to be used solely for an outdoor cafe with table sit down service only and no other commercial activities or sub-letting is permitted within said area. The Licensee acknowledges and agrees that no take-out or window service shall be made directly to customers from the window openings onto the License Area.

The License is effective May 1, 1993 subject to cancellation or amendment by the Licensor on thirty (30) days written notice to the Licensee.

2. The Licensee agrees that it is not eligible for relocation benefits.
3. The License Area is to be vacated on thirty (30) days written notice by the Licensor. No obligation on the part of the Licensor direct or indirect is to be construed beyond this temporary license.
4. The License Fee shall be \$330.00 per month, payable in advance on the first day of each month, commencing May 1, 1993 to October 31, 1993. Upon execution of this Agreement, the Licensee shall deposit with the Licensor a sum equal to one month's License Fee, to be retained by the Licensor until sixty days after the termination of this Agreement in order to insure the satisfactory completion of all the terms and conditions of this Agreement, and/or also deposit

with the Licensor a bond or cash deposit in the amount as may be required in the Special Conditions attached to this License to assure restoration of the property to its condition at the time of initial occupancy by the Licensee or as may be required by the said Special Conditions. No interest shall be paid to the Licensee on said deposit. Any portion of the License Fee remaining unpaid for a period of thirty days following its due date, the validity of which has not been contested in writing by the Licensee within said thirty day period, may, without further authorization, be deducted from any funds that are due or maybe due the Licensee from the Licensor. Any monthly installment of the License Fee, which has not been paid by the Licensee within thirty (30) calendar days of the due date shall be subject to an interest charge of 1.5% per month on the outstanding balance.

5. The Licensee shall indemnify and save harmless the Licensor from all suits, actions, claims, demands, damages or losses, expenses, and cost of every kind and description to which the Licensor may be subjected to or put by reason of injury (including death) to persons or property resulting from, in connection with, or growing out of any act of commission or omission of the Licensee, its agents, servants, employees, visitors, guests, contractors, subcontractors, or any and all other persons or corporations dealing with the Licensee in any way in the occupancy and use of the License Area. At the request of the Licensor, the Licensee shall initiate and complete all activities, including any legal proceedings, necessary to effect the resolution of any such suits, actions, claims, or demands, except as set forth herein.
6. The Licensee shall carry for the term of this License comprehensive public liability insurance insuring the Licensor and the Licensee against all claims and demands for personal injury and property damage with respect to the License Area, with limits of Five Hundred Thousand (\$500,000) Dollars for property damage, One Million (\$1,000,000) Dollars for injury or death to one person, and Two Million (\$2,000,000) Dollars for injury or death to more than one person in a single accident. The Licensor shall be named as an additional insured in all policies for such insurance, and the Licensee shall furnish a certificate of such insurance to the Licensor prior to taking occupancy of the License Area.
7. The Licensee shall take possession of the License Area in "as-is" condition on the date of this License Agreement. The Licensee shall not commit or suffer waste or impairment of the License Area property.
8. The Licensee agrees to maintain the License Area in a clean, safe and orderly manner. No accumulation of litter, trash, debris or other disposable material will be permitted on the premises.
9. The Licensee covenants that it will not occupy or use the License Area, nor allow it to be occupied or used for any purposes other than those for which it is

customarily used, nor in any way to occupy or use the property, nor allow it to be occupied or used in other than a proper or fitting manner, nor in a manner contrary to any law of the Commonwealth or to any ordinance or by-law of the City of Boston.

10. The Licensee agrees to assume all maintenance expenses including sewer and water charges and Licensee will have complete responsibilities for compliance with all municipal codes and ordinances. During the term of this License Agreement, the Licensee shall pay directly to the proper persons or authorities when due all charges with respect to the License Area, whether called charges, taxes, assessments, fees, or otherwise, for utility services, water and sewer use, taxes, betterment assessments, and other charges, in order that the License Fee hereunder shall be absolutely net to the Licensor.

The Licensee shall be solely responsible for all maintenance, security, and other services required to keep the License Area in good, safe, and attractive condition and repair. All fixtures, effects, equipment, and property of any kind of the Licensee, and of all persons claiming through or under the Licensee, shall be at the sole risk of the Licensee.

11. The Licensee agrees to comply with the Special Conditions outlined on the attached sheet entitled "Special Conditions", and further agrees to comply with any other reasonable rules and regulations as the Licensor shall establish from time to time upon notice to the Licensee.
12. Failure to pay the License Fee or failure to comply with the general and special conditions will terminate this agreement forthwith and the Licensee agrees to surrender the premises peacefully, and further agrees not to oppose or contest eviction proceedings when notified to vacate or when notified that the Agreement has been terminated.
13. This License may not be assigned, transferred, mortgaged or encumbered in any way without the specific written permission of the Licensor.
14. No fixtures shall be installed in, and no improvements or alterations shall be made to the License Area without the Licensor's written permission. Upon the termination of this License Agreement by expiration of the term or otherwise, the Licensee shall remove from the License Area all of its equipment, supplies, furnishings, and other personal property, and shall, if directed by the Licensor, also remove all fixtures and fixed improvements installed by the Licensee and shall repair any damage caused thereby. Property not so removed shall, at the Licensor's option, become the property of the Licensor. The Licensee shall leave the License Area in at least as good condition as received at the beginning of the License term.

In witness whereof the parties hereto have placed their hands and seals below as of the date first above written.

ATTEST: **BOSTON REDEVELOPMENT AUTHORITY**

By: _____
Paul L. Barrett, Director

AU BON PAIN

By: _____

Approved as to form:

General Counsel
Boston Redevelopment Authority

SPECIAL CONDITIONS

1. Licensee will pay all charges for taxes, water, sewer, gas, electricity, telephone, permits, fees and insurance connected in conjunction with their occupancy of the License Area.
2. The Licensee shall be responsible for all maintenance expenses, including extermination, cleaning to the gutters of the street and for the removal of any weeds and growth, trash, debris, or junk from the License Area and be responsible for removal of snow and ice from the sidewalks, and maintain it in a safe and clean condition at all times.
3. Licensee shall be responsible for any of their contractor(s) workmen, employees or agents working on or in the License Area for conformance with this License Agreement and for compliance for any laws, codes, rules, regulations or ordinances of any federal, state, or municipal board, agency, or commission and shall be responsible for obtaining all permits or licenses at their expenses. Licensee agrees that any expenses incurred by it in connection with its use and occupancy of the License Area will be exclusively the responsibility of the Licensee, and there will be no liability on the part of the Licensor.
4. The Licensee will have complete responsibilities for compliance with all federal, state and municipal codes and ordinances.
5. The Licensee will neither make any change in, nor erect nor place any building structure or sign (except no trespassing signs) upon the License Area unless the consent of the Authority thereto has first been obtained in writing. Licensee acknowledges any site improvements of the License Area shall be subject to landscape and design suggestion and review by Licensor's design staff. The Licensee, with exception of tables, chairs, umbrellas, fencing and/or bollards and chairs shall not add to or alter the License Area without prior written approval by the Director of the BRA.
6. No stock piling of spoil, refuse, trash or landfill materials will be permitted or allowed on the License Area.
7. The Licensee must provide and maintain proper insurance coverage in the amount specified in Paragraph #6 of the License Agreement, with the Boston Redevelopment Authority named as additional insured over the term of the License for use of the License Area.
8. Licensee shall not park vehicles on public right-of-ways adjacent to the License Area.

9. Licensee will permit the Licensor or its duly authorized agent to enter upon the License Area at any time, either to view or inspect the same, or to remove, without being held responsible therefore, any building, structure, sign or any material not approved by the Licensor.
10. Licensee will permit the Licensor or its future developer to enter upon the License Area at any reasonable time to inspect the License Area, take site measurements, perform test borings or similar subsurface explorations without disruptions. The Licensee shall use best efforts to coordinate its activities and the activities of any sublicense with other persons who are authorized by the Licensor to utilize the License Area.
11. Licensee acknowledges this is a temporary License and their occupancy is only for a limited interim use. Licensee agrees to remove the sidewalk cafe, decorative fences and all equipment incident to the operation of said cafe.
12. In conjunction with a general increase in the rents in the Government Center Project, the License Fee shall be subject to change upon thirty (30) days written notice to the Licensee but in no event will the fees increase more than the average increase borne by all similar licenses in the Government Center Project in the same year.
13. The Licensee assumes all liability, personal and private for any and all motor vehicles in the License Area.
14. Any monthly installment of the License Fee, which has not been paid by the Licensee within thirty (30) calendar days of the due date shall be subject to an interest charge of 1.5% per month on the outstanding balance.
15. Licensee shall provide and assume all costs of the License Area including police, fire, security guards, ambulances or sanitary services required to insure compliance with all laws, codes and ordinances. Licensee agrees that it will not occupy or use the License Area until it has received from the proper respective City of Boston departments, agencies, etc., all required Licenses or Permits and has furnished copies of said Licenses or Permits to the Licensor. Licensee will not apply for a liquor, beer or wine license.
16. The Licensee shall take adequate precautions to protect all existing walks, roads, streets, utilities, pipes, curbs, pavements, fencing, hydrants, signs, trees, and plantings on or off the premises and shall repair and replace or otherwise make good as directed by the Licensor, any damage so caused. All streets and sidewalks shall be kept free of all debris and equipment to provide safety and minimum inconveniences to the public.

17. The Licensee shall assist and provide backup during any emergency call for medical, fire, evacuation, or crowd control management; and maintain safe and effective evacuation procedures in the event of an emergency. In addition, Licensee shall respond to reported crimes, accidents, injuries and any emergency situation and stand ready to effect an emergency evacuation according to specific orders of City officials when appropriate.
18. Licensee shall immediately notify the Boston Police and Boston Fire Departments of any emergency requiring their service. The Licensee is expected to transmit all information accurately to both the Boston Fire Department and the Boston Police Department and to arrange a suitable meeting place in expediting their entrance to the License Area.
19. The Licensee shall not commence or continue to perform any work at the License Area unless the Licensee has in full force and effect all required insurance, and until all insurance certificates have been filed evidencing the specific insurance coverage required, nor shall any payment for work performed become due and payable until those certificates have been filed. The Licensee shall not permit any subcontractor, supplier or other person or organization to perform work unless the worker's compensation insurance requirements have been complied with by that subcontractor, supplier, other persons or organization.

All insurance policies provided to the foregoing provisions of these insurance requirements shall be in the form and written by companies satisfactory to the Licensor.

As evidence of specified insurance coverage, the Licensee shall provide certificates of insurance itemizing the specific policies issued, the limits of coverage afforded, and the endorsements provided, all in accordance with the requirements of the forms prescribed in the License Agreement, or as required by the Licensor prior to execution or any extension.

All the policies of insurance so required of the Licensee shall be endorsed to include as additional insureds: The Boston Redevelopment Authority as Licensor, the City of Boston, Authority's consultants, and each of their directors, officers, employees, representatives, or agents. The insurance afforded to these additional insureds shall be primary insurance. If the additional insureds have other insurance which might be applicable to any loss, the amount of insurance provided under the Licensee's policies of insurance shall not be reduced or prorated by the existence of other insurance.

Without limitation of any other provisions of this License Agreement, if (a) the Licensee's agreement herein to insure or to name as additional insured the Authority or any other specified additional insured with respect to contractual

liability assumed by the Licensee under the terms of this License Agreement or otherwise, or (b) any contract of insurance between the Licensee or any Sub-Licensee and its insurance company shall to any extent be or be determined to be void or unenforceable, it is the intention of the parties that such circumstances shall not otherwise affect the validity or enforceability of the Licensee's agreements and obligations under this License Agreement nor the validity or enforceability of such contract of insurance, each of which shall be enforced to the fullest extent permitted by law.

20. Licensee agrees to participate with the Licensor and City of Boston in the upkeep of the four (4) above grade planters adjacent to the License Area by fertilizing, planting, and watering the annual flowers and maintain them over the course of the License Agreement.

SEARS CRESCENT
VENUE

The License Area is to be used solely for the temporary use of a certain portion of City Hall Plaza containing approximately 2100 square feet adjacent to the "Sears Crescent Building" in Government Center for seasonal outdoor seasonal sale for patrons of the San Juan Fair for a period of May 1st to October 31st each year.

The License Area is to be used solely for an outdoor sale with table, all flower stands only and no other commercial activities or advertising is permitted within said area. The Licensee acknowledges and agrees that no take-out or on-site service shall be made directly to customers from the interior of the building into the License Area.

All San Juan has agreed to participate with the City of Boston in the upkeep of the four (4) above grade planters located adjacent to their proposed license area by fertilizing, planting and watering the annual flowers.

SRES/11.RPT
042393/8

Agreement is an estimated right for use, to right for continued pedestrian access to City Hall Plaza and agrees to not block the alley between the Sears Crescent Building and High England Bldg for Homeless Veterans Building.

EXHIBIT A

MEMORANDUM

MAY 12, 1973

TO: BOSTON REDEVELOPMENT AUTHORITY AND
PAUL L. BARRETT, DIRECTOR

FROM: BRIAN DELOREY, ASSISTANT DIRECTOR FOR
ECONOMIC DEVELOPMENT
MICHAEL A. SANTOSHI, ASSISTANT DIRECTOR FOR
REAL ESTATE SERVICES

SUBJECT: TEMPORARY LICENSE FOR USE OF SLIVER PARCEL OF LAND
FOR OUTDOOR PATIO USE

Mr. Louis Bink, owner of Au Bon Pain, has requested a license for use of land
adjacent to the Au Bon Pain in the Government Center area for use.

A portion of City Hall Plaza measuring approximately 10 feet wide and
containing 216 square feet in the Government Center area has been proposed
to be used as a seasonal outdoor sidewalk cafe.

The City of Boston has agreed to participate with the City of Boston in the upkeep of the
four (4) above grade planters located adjacent to their proposed license area by
fertilizing, planting and watering the annual flowers.

Au Bon Pain will leave an estimated eight (8) feet to allow for continued pedestrian
access on City Hall Plaza and agrees to not block the alley between the Sears
Crescent Building and New England Shelter for Homeless Veterans building.

The License Area is to be used solely for the temporary use of a certain portion
of City Hall Plaza containing approximately 216± square feet adjacent to the
"Sears Crescent Building" in Government Center for seasonal outdoor sidewalk
cafe for patrons of Au Bon Pain for a period of May 1st to October 31st each
year.

The License Area is to be used solely for an outdoor cafe with table sit down
service only and no other commercial activities or sub-letting is permitted within
said area. The Licensee acknowledges and agrees that no take-out or window
service shall be made directly to customers from the window openings onto the
License Area.

Au Bon Pain has agreed to participate with the City of Boston in the upkeep of the
four (4) above grade planters located adjacent to their proposed license area by
fertilizing, planting and watering the annual flowers.

Au Bon Pain will leave an estimated eight (8) feet to allow for continued pedestrian
access on City Hall Plaza and agrees to not block the alley between the Sears
Crescent Building and New England Shelter for Homeless Veterans building.

The License Area is to be used solely for the temporary use of a certain portion
of City Hall Plaza containing approximately 216± square feet adjacent to the
"Sears Crescent Building" in Government Center for seasonal outdoor sidewalk
cafe for patrons of Au Bon Pain for a period of May 1st to October 31st each
year.

The License Area is to be used solely for an outdoor cafe with table sit down
service only and no other commercial activities or sub-letting is permitted within
said area. The Licensee acknowledges and agrees that no take-out or window
service shall be made directly to customers from the window openings onto the
License Area.

Au Bon Pain has agreed to participate with the City of Boston in the upkeep of the
four (4) above grade planters located adjacent to their proposed license area by
fertilizing, planting and watering the annual flowers.

Au Bon Pain will leave an estimated eight (8) feet to allow for continued pedestrian
access on City Hall Plaza and agrees to not block the alley between the Sears
Crescent Building and New England Shelter for Homeless Veterans building.

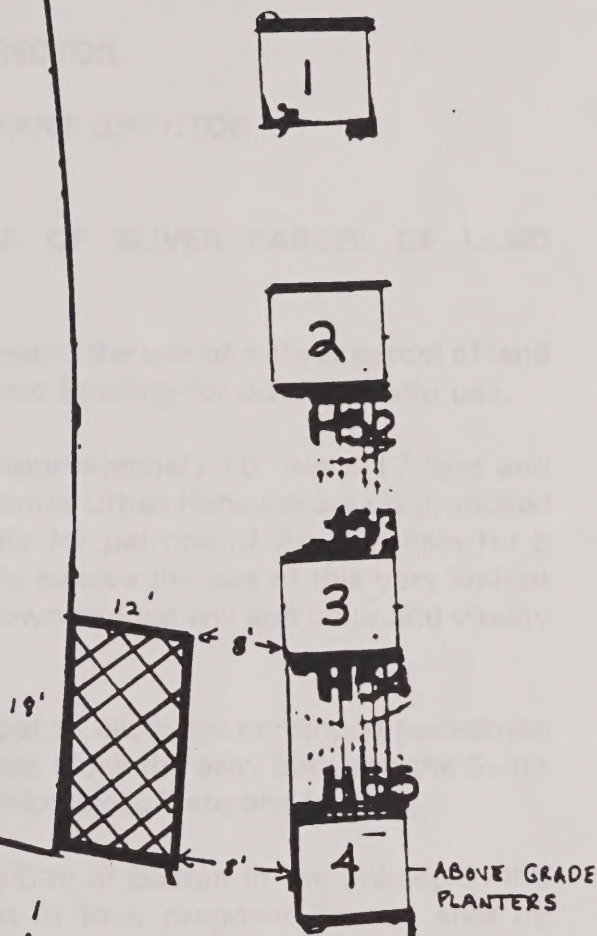
The License Area is to be used solely for the temporary use of a certain portion
of City Hall Plaza containing approximately 216± square feet adjacent to the
"Sears Crescent Building" in Government Center for seasonal outdoor sidewalk
cafe for patrons of Au Bon Pain for a period of May 1st to October 31st each
year.

The License Area is to be used solely for an outdoor cafe with table sit down
service only and no other commercial activities or sub-letting is permitted within
said area. The Licensee acknowledges and agrees that no take-out or window
service shall be made directly to customers from the window openings onto the
License Area.

Au Bon Pain has agreed to participate with the City of Boston in the upkeep of the
four (4) above grade planters located adjacent to their proposed license area by
fertilizing, planting and watering the annual flowers.

Au Bon Pain will leave an estimated eight (8) feet to allow for continued pedestrian
access on City Hall Plaza and agrees to not block the alley between the Sears
Crescent Building and New England Shelter for Homeless Veterans building.

SEARS CRESCENT
VENUE au bon pain



MEMORANDUM

MAY 13, 1993

**TO: BOSTON REDEVELOPMENT AUTHORITY AND
PAUL L. BARRETT, DIRECTOR**

**FROM: BRIAN DELOREY, ASSISTANT DIRECTOR,
ECONOMIC DEVELOPMENT
MICHAEL A. BARTOSIAK, ASSISTANT DIRECTOR,
REAL ESTATE SERVICES**

**SUBJECT: TEMPORARY LICENSE FOR USE OF SLIVER PARCEL OF LAND
FOR OUTDOOR PATIO USE**

Mr. Louis Kane, owner of Au Bon Pain, has requested the use of a sliver parcel of land adjacent to the Au Bon Pain in the Sears Crescent Building for outdoor patio use.

A certain portion of City Hall Plaza measuring approximately 18 feet x 12 feet and containing 216 square feet in the Government Center Urban Renewal area is proposed to be used as a seasonal outdoor sidewalk cafe for patrons of Au Bon Pain for a period annually of May 1st to October 31st. We believe the use of this very limited sliver parcel of area for patio use with table sit down service will add color and vitality to the area.

Au Bon Pain will leave an estimated eight (8) feet to allow for continued pedestrian access on City Hall Plaza and agrees that it will not block the alley between the Sears Crescent Building and New England Shelter for Homeless Veterans building.

Au Bon Pain has agreed to participate with the City of Boston in the upkeep of the four (4) above grade planters located adjacent to their proposed license area by fertilizing, planting and watering the annual flowers.

In addition, Au Bon Pain will pay the BRA a monthly license rental of \$330.00. This amount was recommended by our Real Estate Division based on similar outdoor sidewalk cafes. A copy of the proposed license agreement is attached.

An appropriate vote follows:

VOTED: That the Director be authorized to execute a License Agreement with Au Bon Pain for a certain portion of City Hall Plaza, adjacent to the Sears Crescent Building, containing approximately 216 square feet to be used for seasonal outdoor sidewalk cafe at a monthly license rental of \$ 330.00 for a period of May 1st to October 31st each year; said License shall provide that the Licensee shall obtain liability insurance naming the BRA as an

additional insured in all policies, in accordance with the BRA's usual form. Said License Agreement is to contain the expressed provision that no obligation on the part of the BRA, direct or indirect, is to be construed beyond this temporary tenancy. Said License to contain the BRA's usual terms and conditions and such other terms and conditions as the Director deems appropriate and in the best interest of the BRA and said license to incorporate Au Bon Pain's agreement to maintain the four above grade flower planters adjacent to their proposed License Area.

